



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Syuichi OKA et al

Application No.: 10/522,878

I.A. Filing Date: October 28, 2004

Filed (371c): January 19, 2006

For: HYPERSENSITIVE AGENT AND METHOD FOR PRODUCING SAME

Customer Service Window, Mail Stop Amendment

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, 401 Dulany Street
Alexandria, Virginia 22314

Sir:

Transmitted herewith is a REPLY TO ELECTION REQUIREMENT in the above-identified application.

☐ Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.

☐ No additional fee is required.

☒ The fee has been calculated as shown below:

| | (Col. 1) | | (Col. 2) | (Col. 3) |
|---|---|-------|---------------------------------------|----------------------------|
| | CLAIMS REMAINING AFTER AMENDMENT | | HIGHEST NO. PREVIOUSLY PAID FOR | PRESENT EXTRA EQUALS |
| TOTAL | * 19 | MINUS | ** 20 | 0 |
| INDEP. | * 2 | MINUS | *** 3 | 0 |
| FIRST PRESENTATION OF MULTIPLE DEP. CLAIM | | | | |

ADDITIONAL FEE TOTAL

| SMALL ENTITY | | |
|----------------------|--|-------------------|
| RATE | | ADDITIONAL FEE |
| x 25 | | \$ |
| x 100 | | \$ |
| + 180 | | \$ |
| ADDITIONAL FEE TOTAL | | \$ |

| OTHER THAN SMALL ENTITY | | |
|-------------------------|--|-------------------|
| RATE | | ADDITIONAL FEE |
| x 50 | | \$ |
| x 200 | | \$ |
| + 360 | | \$ |
| TOTAL | | \$ |

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

☒ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

☐ First - \$ 60.00
☐ Second - \$ 225.00
☐ Third - \$ 510.00
☐ Fourth - \$ 795.00

Month After Time Period Set

Other Than Small Entity

Response Filed Within

☒ First - \$ 120.00
☐ Second - \$ 450.00
☐ Third - \$ 1020.00
☐ Fourth - \$ 1590.00

Month After Time Period Set

☐ Less fees (\$) already paid for month(s) extension of time on .

☐ Please charge my Deposit Account No. 02-4035 in the amount of \$.

☒ Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$120.00.

☐ A check in the amount of \$ is attached (check no.).

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK, P.L.L.C.

Attorneys for Applicant(s)

04/27/2007 SZEWDIE1 00000363 10522678

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: OKA=4

In re Application of:) Confirmation No.: 1794
)
Syuichi OKA et al) Art Unit: 1655
)
I.A. Filing Date: 10/28/2004) Examiner: M. L. McCormick
371(c) Date: January 19, 2006)
) April 26, 2007
U.S. Appln. No.: 10/522,678)
)
For: HYPOTENSIVE AGENT AND)
METHOD FOR PROVIDING SAME)

REPLY TO ELECTION REQUIREMENT

Customer Service Window, Mail Stop Amendment
Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

Applicants are in receipt of the Office Action
mailed February 28, 2007, entirely in the nature of a
requirement for election of species on the basis of alleged
lack of unity of invention. A petition for one month's
extension of time is attached hereto, and applicants reply
below.

First, however, applicants respectfully request the
PTO to acknowledge receipt of applicants' papers filed under
Section 119.

The PTO has made two (2) election of species requirements. As applicants must make elections, even though the requirements are traversed, applicants hereby provisionally and respectfully elect **melibiose** as the oligosaccharide and **black soybean** as the leguminous plant, both with traverse and without prejudice.

Claim 20 is specific to black soybean, as is claim 35. All the claims are generic or specific to black soybean, so all the claims read on black soybean.

As regards the oligosaccharide, all the claims except for claims 27 and 33 read on (cover) melibios either generically or specifically. Thus the claim which read on melibios are claims 18-26, 28-32 and 34-37.

The requirement is traversed because there is no lack of unity of invention, i.e. there is a single general inventive concept under PCT Rules 13.1 and 13.2 as set forth in the generic claims. Respectfully, the PTO has provided no evidence of the absence of a single general inventive concept, and applicants respectfully submit that a simple statement in the Office Action that the species are different because they have different properties and are therefore distinct is a conclusion and not evidence. In the absence of prior art establishing a lack of corresponding special technical

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Amd. dated April 26, 2007
Reply to Office Action of February 28, 2007

features among the species, the requirement should be withdrawn, and such is respectfully requested.

Applicants wish to add, simply for the record, that as almost all the claims are generic, a complete search and examination would in any event be required. According to the second paragraph of MPEP 803, as a complete search and examination will be required, there would be no serious burden in doing so.

Applicants now respectfully await the results of a first examination on the merits.

Respectfully submitted,

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